PETITIONER'S APPENDIX

24-2135-cr
United States v. Sternquist

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of July, two thousand twenty-five.

Present:

WILLIAM J. NARDINI,
SARAH A. L. MERRIAM,
MARIA ARAÚJO KAHN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 24-2135-cr

KARA STERNQUIST, AKA CARA SANDIEGO, AKA KARA WITHERSEA,

Defendant-Appellant.

For Appellee: ANDRÉS PALACIO (Anthony Bagnuola, Frank Turner Buford, *on the brief*), Assistant United States Attorneys, *for* John J. Durham, United States Attorney for the Eastern District of New York, Brooklyn, NY.

For Defendant-Appellant: ALLEGRA GLASHAUSSER, Federal Defenders of New York, Inc., Appeals Bureau, New York, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Dora L. Irizarry, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-Appellant Kara Sternquist appeals from a judgment of the United States District Court for the Eastern District of New York (Dora L. Irizarry, *District Judge*), entered on August 9, 2024, sentencing her principally to sixty months of imprisonment and three years of supervised release following her guilty plea to one count of possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). Sternquist's offense resulted from her possession of a firearm following previous felony convictions for producing false identification in violation of 18 U.S.C. §§ 1028(a)(1) and (b)(1)(A) and making and selling computerized templates for producing fake identification documents in violation of 18 U.S.C. §§ 1028(a)(5) and (b)(3)(c). On appeal, Sternquist argues that § 922(g)(1) is unconstitutional, both facially and as applied to her as a nonviolent felony offender, and that her sentence is procedurally and substantively unreasonable. We assume the parties' familiarity with the case.

I. Constitutionality of 18 U.S.C. § 922(g)(1)

At the outset, we conclude that our recent decision in *Zherka v. Bondi*, No. 22-1108-cv, 2025 WL 1618440, ___ F.4th ___ (2d Cir. 2025),[1] forecloses Sternquist's challenges to the constitutionality of § 922(g)(1). In *Zherka*, we held that § 922(g)(1) is constitutional both facially and as applied to those who have been convicted of nonviolent felony offenses. *See id.* at *20–22.

[1] Unless otherwise indicated, in quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

As Sternquist concedes, our reasoning in *Zherka* applies equally here. Accordingly, Sternquist's challenges to the constitutionality of § 922(g)(1) fail.

II. Sentencing Challenges

"We review the procedural and substantive reasonableness of a sentence under a deferential abuse-of-discretion standard," applying *de novo* review to questions of law, including the district court's interpretation of the U.S. Sentencing Guidelines, and clear error review to questions of fact. *United States v. Yilmaz*, 910 F.3d 686, 688 (2d Cir. 2018). We discern no procedural or substantive error in the district court's imposition of Sternquist's sentence.

A. Procedural Reasonableness

"A sentence is procedurally unreasonable when the district court has committed a significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C. §] 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *United States v. Cooper*, 131 F.4th 127, 130 (2d Cir. 2025).

First, because we discern no clear error in the district court's finding that Sternquist possessed a number of devices that qualify as firearm silencers, we reject her argument that it miscalculated her Guidelines range. Guidelines § 2K2.1(a)(4)(B) provides, in pertinent part, that a defendant's base offense level is 20 if the offense involved a silencer, *see* 26 U.S.C. § 5845(a), and she was a "prohibited person" when she committed the offense. Under 18 U.S.C. § 921(a)(25), "firearm silencer" means "any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication." Guidelines § 2K2.1(b)(1)(B) instructs the district court to

increase the defendant's offense level by four if the offense involved between eight and twenty-four "firearms," a term that is defined to include silencers, *see* 18 U.S.C. § 921(a)(3); U.S.S.G. § 2K2.1(b)(1)(B) Application Note 1. Here, Sternquist argues that various cylindrical devices the district court classified as silencers were merely "solvent traps" used for collecting fluids while cleaning guns, and that there is no evidence that she intended to use the devices as silencers. But the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") submitted reports classifying the devices as silencers because they contained front and rear end caps, outer tubes, baffles, and "spot drilling" or "dimpling" used to designate where to drill a hole to "allow a projectile to pass through." App'x at 137–66. These reports provided an ample basis for the district court to conclude as a factual matter that the devices were intended by Sternquist to be used as silencers.[2] Sternquist does not dispute that she was a "prohibited person" at the time she committed her offense. *See* U.S.S.G. § 2K.2.1 Application Note 3. Thus, the district court did not err by calculating her base offense level to be 20 under § 2K2.1(a)(4)(B), or by increasing her offense level by four under § 2K2.1(b)(1)(B).[3]

Next, we reject Sternquist's argument that the district court relied on improper considerations at sentencing. Contrary to Sternquist's assertion, the district court did not improperly compare her to "gang bangers" and terrorists. In rejecting Sternquist's argument that she had illegally possessed firearms for "self-defense," the district court appears to have mentioned "gang bangers" merely to note that it had heard the same argument from defendants who had

[2] Sternquist needed to possess only one device qualifying as a silencer to trigger the base offense level of 20. Moreover, for purposes of § 2K2.1(b)(1)(B), there is no dispute that, including at least one of the purported silencers, Sternquist possessed at least eight items that qualified as firearms. Accordingly, we need only determine that one of the devices at issue was properly found to be a silencer.

[3] Because a determination that the district court erred in finding that Sternquist also possessed a machinegun and a receiver would not change her Guidelines calculation, we need not reach Sternquist's arguments with respect to those items.

committed violent crimes. App'x at 107–08. The district court's reference to terrorism pertained to the seriousness of Sternquist's possession of "phony law enforcement badges and ghost guns," *id.* at 126, particularly in light of her prior felony conviction for selling false identifications on the open market, given the potentially grave consequences that could have resulted if those items had fallen into the wrong hands. *Id.* at 125–26. Nor did the district court improperly reference Sternquist's past hardships. Following Sternquist's statement that she "never had any ill intent," *id.* at 117, the district court noted that Sternquist was visiting websites that were "very clearly expressing anti-law enforcement sentiment," and that given the "horrors" she experienced in a military academy as a child and in the U.S. Navy, it was "not a far stretch to think that she might have a slight axe to grind with the Navy or even with [the New York Police Department] for their failure to protect in her time of need," *id.* at 126. Motive is an appropriate factor for a district court to consider at sentencing, *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993), and Sternquist fails to explain why it was improper for the district court to discuss her personal circumstances, including as they might relate to her use of anti-law enforcement websites, when assessing why she may have chosen to engage in criminal conduct, *see United States v. Kane*, 452 F.3d 140, 143 (2d Cir. 2006).

We likewise reject Sternquist's contention that the district court relied on erroneous facts at sentencing. Contrary to Sternquist's argument on appeal, the district court did not inaccurately state that she had committed new crimes while out on bond pending further proceedings in the present case; instead, in discussing Sternquist's criminal history, the district court discussed her pattern of repeated arrests, including while out on bond in *other* cases, App'x at 113, 127. Nor did the district court commit procedural error by discussing issues with medical treatment and other conditions at the Metropolitan Detention Center ("MDC"). Although Sternquist suggests that the

district court's statements show that it misunderstood the circumstances of her presentence confinement, she acknowledges that she was housed at the MDC for two weeks. And, as discussed at her plea hearing, Sternquist remained in MDC custody while she was at a separate rehabilitation facility. Indeed, the district court's statements at Sternquist's plea hearing leave little doubt that it was well aware of where she was confined prior to sentencing. *See id.* at 79 (referring to the "medical staff at the nursing facility" where Sternquist was being housed). Indeed, the district court expressly recognized that Sternquist had "suffered more than the average inmate has suffered" and took that into account in determining the sentence. *Id.* at 128. Thus, the district court's discussion of the conditions at the MDC does not constitute a reliance on "clearly erroneous facts" amounting to procedural error.

Finally, we reject Sternquist's argument that the district court failed to properly consider whether her term of imprisonment would result in unwarranted sentencing disparities. Although courts must consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), this point "merits little discussion" when the defendant has "failed to provide sufficient information to compel the district court to find that [other individuals who received lower sentences] were so similarly situated to [her]self that any disparity in sentence would be unwarranted," *United States v. Broxmeyer*, 699 F.3d 265, 296–97 (2d Cir. 2012). As the district court discussed at sentencing, Sternquist's sentencing memorandum cited various cases for the proposition that "[b]elow-guideline sentences are common in this district for people convicted of gun possession." Dist. Ct. Dkt. 111 at 12–13. But Sternquist failed to provide any specificity as to how the defendants in those other cases were so similarly situated to her that any sentencing disparity would

be improper. Thus, she provides no basis to conclude that the district court neglected its obligation under § 3553(a)(6).

B. Substantive Reasonableness

"A sentence is substantively unreasonable if it cannot be located within the range of permissible decisions, if it shocks the conscience, or if it constitutes a manifest injustice." *United States v. Williams*, 998 F.3d 538, 542 (2d Cir. 2021). "District courts must consider the sentencing factors outlined in 18 U.S.C. § 3553(a), and on review, we account for the totality of the circumstances, giving due deference to the sentencing judge's exercise of discretion." *Yilmaz*, 910 F.3d at 689. "While we do not presume that a Guidelines sentence is necessarily substantively reasonable, that conclusion is warranted in the overwhelming majority of cases . . . ." *United States v. Messina*, 806 F.3d 55, 66 (2d Cir. 2015).

We conclude that Sternquist's sentence is substantively reasonable. At sentencing, the district court thoroughly explained its consideration of the § 3553(a) factors, which included a lengthy discussion of Sternquist's criminal history and offense conduct, her past hardships, and the conditions of her presentence confinement. Following this explanation, the district court sentenced Sternquist to a term of imprisonment within her Guidelines range of fifty-seven to seventy-one months. Although Sternquist argues that the district court failed to properly consider her personal circumstances, including the difficulties she faced as a child, the way she was treated while in custody before sentencing, and the nature of her offense, the district court expressly discussed each of those topics at sentencing. Sternquist's disagreement with how the district court weighed those circumstances does not provide a basis for disturbing her sentence. *See Broxmeyer*, 699 F.3d at 289 ("[W]e are mindful that facts may frequently point in different directions so that

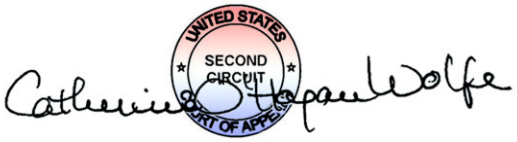
even experienced district judges may reasonably differ, not only in their findings of fact, but in the relative weight they accord competing circumstances.").

* * *

We have considered Sternquist's remaining arguments and find them unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	**MEMORANDUM AND ORDER**
	:	**(Amended)**
-against-	:	**22-cr-473(DLI)**
	:	
KARA STERNQUIST,	:	
	:	
Defendant.	:	

DORA L. IRIZARRY, United States District Judge:

On May 30, 2023, Kara Sternquist ("Defendant") moved to dismiss Count Three of the Indictment charging her with being a Felon in Possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 3551 *et. seq*. on the ground that § 922(g)(1), which prohibits individuals with prior felony convictions from possessing firearms, is unconstitutional under the Second Amendment both on its face and as applied to her. *See*, Def.'s Mot. ("Mot."), Dkt. Entry No. 74. The Government opposed. *See*, Gov't. Opp. ("Opp."), Dkt. Entry No. 82. Defendant replied. *See*, Def.'s Reply. ("Reply"), Dkt. Entry No. 83. For the reasons set forth below, Defendant's motion is denied.

BACKGROUND

Familiarity with the facts and procedural history of this case is presumed and only those facts relevant to the disposition of the motion are repeated herein. On April 11, 2007, Defendant pled guilty in the United States District Court for the Southern District of Ohio to producing false identification documents in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1)(A) and, on July 7, 2007, was sentenced to 12 months' imprisonment.[1] *See*, Opp. at 2. Three years later, on June 30, 2010, Defendant pled guilty in the United States District Court for the District of New Jersey to making

[1] Defendant used the name Michael J. Sternquist at the time of the prior convictions, but, as Defendant identifies as female, now utilizes the legal name Kara Sternquist. *See*, Opp. at 3, n.1.

and selling computerized templates for producing fake identification documents in violation of 18 U.S.C. §§ 1028(a)(5), (b)(3)(c) and, on October 8, 2010, was sentenced to 27 months' imprisonment followed by three years of supervised release. *Id.*

On June 19, 2021, Defendant was arrested in New York County for criminal mischief in the second degree, a violation of N.Y. Penal Law § 145.10. *Id.* at 3. While the state charges were pending, U.S. Customs and Border Protection officers intercepted multiple international mail parcels at John F. Kennedy International Airport addressed to Defendant. *Id.* These packages, shipped from various locations in China, contained fraudulent badges purporting to belong to various government agencies, including, *inter alia*, the U.S. Marshal's Service, and the U.S. Department of State. *Id.* On September 14, 2022, federal agents executed a search warrant at Defendant's home where they found dozens of additional counterfeit badges, fake passports, counterfeit seals, military identification cards, and stolen credit cards. *Id.* During the execution of the warrant, agents recovered 23 firearm-related pieces of equipment, including 15 suppressors (silencers) and 8 items that qualified as "firearms" for purposes of section 922(g)'s prohibition, one of which qualified as a "machine gun" as defined by 18 U.S.C. § 921(a)(24). *Id.*

On October 17, 2022, a grand jury of this district returned an indictment charging Defendant with Government Seals Wrongfully Procured in violation of 18 U.S.C. § 1017 ("Count One"), Unauthorized Possession of Badges, Identification Cards and Other Insignia in violation of 18 U.S.C. § 701 ("Count Two"); and being a Felon in Possession of a Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) ("Count Three"). *See,* Indictment, Dkt. Entry No. 40, at 1-2.

LEGAL STANDARD

The Second Amendment provides that: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S.

Const. amend II. As the Supreme Court has held, the Second Amendment "confer[s] an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008); *See also, McDonald v. City of Chicago*, 561 U.S. 742, 767-68, 778 (2010). In *Heller*, the Supreme Court upheld this right, finding unconstitutional a law that "ban[ned] handgun possession in the home." 554 U.S. at 595, 598-99, 635. Thereafter, in *McDonald*, the Supreme Court reaffirmed *Heller* and extended the individual Second Amendment right to the states through the Fourteenth Amendment, invalidating a set of municipal statutes that had banned handguns in homes. 561 U.S. at 767-68, 778.

However, at all times, the Supreme Court repeatedly has made clear that the Second Amendment right is "not unlimited." *Heller*, 554 U.S. at 595; *McDonald*, 561 U.S. at 786 (noting that "[i]t is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not 'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose'") (quoting *Heller*, 554 U.S. at 626). Indeed, as the Supreme Court explained in *Heller*, and reconfirmed in *McDonald*, "nothing in [its] opinion should be taken to cast doubt on" well established "presumptively lawful regulatory measures," including "*longstanding prohibitions on the possession of firearms by felons* and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27, n.26 (emphasis added); *McDonald*, 561 U.S. at 786 ("repeat[ing] those assurances").

In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Supreme Court reconfirmed that *Heller* and *McDonald* "recognized that the Second and Fourteenth Amendments protect the right of an *ordinary, law-abiding citizen* to possess a handgun in the home for self-defense." 142 S. Ct.

2111, 2122 (2022) (emphasis added). It then went on to hold that, "*consistent* with *Heller* and *McDonald*, [ ] the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home" as well. *Id.* at 2122 (emphasis added). Accordingly, *Bruen* found unconstitutional a New York state licensing regime that required individuals to demonstrate "a special need for self-defense" to obtain a public carry license. *Id.* As the *Bruen* Court explained, the regime violated the individual right "to carry a handgun for self-defense outside the home" protected under the Second Amendment. *Id.*

In so holding, the *Bruen* Court clarified that "the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-30. In this way, *Bruen* put an end to a "'two-step' framework for analyzing Second Amendment challenges" that the Courts of Appeals had instituted in the years following *Heller* and *McDonald*, which had "combine[d] history with means-end scrutiny." *Id.* at 2125; *United States v. Hampton*, 2023 WL 3934546, at *10, n.15 (S.D.N.Y. June 9, 2023) (explaining that, under the old "two-step" framework, courts first would "'determine whether the challenged legislation impinges upon conduct protected by the Second Amendment,' and, if so, 'the appropriate level of scrutiny to apply and evaluate the constitutionality of the law using that level of scrutiny'") (quoting *United States v. Jimenez*, 895 F.3d 228, 232 (2d Cir. 2018)).

As the *Bruen* Court explained, "*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context." *Bruen*, 142 S. Ct. at 2127. Thus, "[i]n keeping with *Heller*," *Bruen* "essentially remove[d] the second step[,] the means-ends balancing[,] from the inquiry," instead focusing the inquiry on "textual and historical analysis alone." *Hampton*, 2023

WL 3934546, at *10, n.15 (citing *Bruen*, 142 S. Ct. at 2127 ("Despite the popularity of this two-step approach, it is one step too many.")); *Bruen*, 142 S. Ct. at 2126 (explaining that the approach set forth in *Bruen* is consistent with *Heller* and *McDonald*).

DISCUSSION

In light of the Supreme Court's recent *Bruen* decision, Defendant moves to dismiss the § 922(g)(1) charge in the Indictment on grounds that it is an unconstitutional restriction on the Second Amendment right to keep and bear arms, both facially and as applied to Defendant, an individual with a history of nonviolent felony convictions.

Defendant contends that § 922(g)(1) cannot survive scrutiny under the new constitutionality test set forth in *Bruen* on three grounds: (1) the Second Amendment "presumptively protects" Defendant's conduct because, even convicted felons like her, are members of "the people" that the Second Amendment's "plain text" covers; (2) the Government must show that § 922(g)(1) "is consistent with the Nation's historical tradition of firearm regulation," but cannot do so here because there is no historical tradition banning people with non-violent felony convictions from owning guns; and (3) Supreme Court dicta finding "longstanding prohibitions" on felon firearm possession to be "presumptively lawful" does not "obviate the need for all lower courts . . . to engage in the independent analysis *Bruen* demands" and "pre-*Bruen* decisions treating [the Supreme Court's] 'presumptively lawful' list as dispositive are no longer good law." Mot. at 2-3, 7-13, 21-23.

The Government opposes maintaining that Defendant's constitutional challenge fails because: (1) *Bruen* did not overrule, but rather confirmed, Supreme Court dicta stating that felon firearm dispossession regulations were "presumptively lawful" and, thus, binding Second Circuit precedent that relied on said dicta in finding § 922(g)(1) constitutional remains good law; (2) under

Bruen's textual inquiry, Defendant and other convicted felons are not included in "the people" afforded Second Amendment protection because they are not "law-abiding citizens;" and (3) even if Defendant is a member of "the people" that the Second Amendment protects, § 922(g)(1) survives *Bruen*'s historical inquiry because the statute's prohibition of felon firearm possession is "consistent with the Nation's historical tradition of firearm regulation," which includes regulation aimed at disarming groups who are perceived as dangerous or who have demonstrated disregard for the law. Opp. at 5-14.

For the reasons set forth below, this Court finds § 922(g)(1) constitutional, both on its face and as applied to Defendant, on the ground that *Bruen* did not disturb and, if anything, endorsed prior Supreme Court dicta assuring the validity of "longstanding prohibitions" of felon firearm possession, and, as such, the Second Circuit's incorporation of that dicta into binding Second Circuit precedent upholding the constitutionality of § 922(g)(1) remains in effect. Accordingly, Defendant's motion is denied.

I. Precedent

Justice Thomas, writing for the majority in *Bruen*, set the stage for the issue to be decided and the breadth of its holding in the opinion's opening paragraph, making it abundantly clear that *Bruen's* holding was *consistent* with *Heller* and *McDonald,* all three of which concerned the rights of "ordinary, law-abiding citizens."

> In *District of Columbia v. Heller* . . . and *McDonald v. Chicago* . . . , we recognized that the Second and Fourteenth Amendments protect the right of an *ordinary, law-abiding citizen* to possess a handgun in the home for self-defense. *In this case, petitioners and respondents agree* that *ordinary, law-abiding citizens* have a similar right to carry handguns publicly for their self-defense. *We too agree,* and now hold, *consistent* with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

Bruen, 142 S. Ct. at 2122, 2134 (emphasis added). Most importantly, Justice Thomas did not state that either *Heller* or *McDonald* or both were being abrogated by *Bruen* in any way. Indeed, throughout the opinion, the *Bruen* majority repeatedly referred to the petitioners before it as two "ordinary" and "law-abiding" citizens with "ordinary self-defense needs" and repeatedly characterized its Second Amendment jurisprudence as providing "law-abiding" citizens with the right to possess handguns. *Id.* at 2122, 2125, 2131, 2133-34, 2138, 2150, 2156.

Relevantly and notably, the concurring opinions in *Bruen* clarify the majority opinion's limits. Justice Kavanaugh, in his concurring opinion, joined by Chief Justice Roberts, both of whose votes were necessary to *Bruen*'s majority, expressly emphasized that "the Second Amendment allows a 'variety' of gun regulations" as set forth in *Heller* and that "[n]othing in [the Court's] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Id.* at 2162 (Kavanaugh, J., concurring) (citing *Heller*, 554 U.S. at 626-27, n.26).

Similarly, Justice Alito, in his concurring opinion, explained that *Bruen* does not "distur[b] anything . . . said in *Heller* or *McDonald* . . . about restrictions that may be imposed on the possession or carrying of guns" and "reiterat[ing]" that "[a]ll that [*Bruen*] decide[s] in *this* case is that the Second Amendment protects the right of *law-abiding people* to carry a gun outside the home for self-defense and that the [New York law at issue in *Bruen*]... is unconstitutional." *Id.* at 2157-59 (Alito, J., concurring) (emphasis added).

Had the *Bruen* Court intended to abrogate or overturn *Heller* and/or *McDonald*, it would have done so explicitly. However, it did not do so. The Court oft has stated that "this Court does not overturn its precedents lightly" and "this Court has always held that 'any departure' from the doctrine 'demands special justification.'" *Michigan v. Bay Mills Indian Community*, 572 U.S. 782,

798 (2014) (quoting *Arizona v. Ramsey*, 467 U.S. 203, 212 (1984)); *See also, Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000) ("This Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.").

Thus, while Defendant would have this Court believe that *Bruen* "deem[ed] one of *Heller*'s 'presumptively lawful' measures to be unconstitutional" and abrogated any prior case law that might have relied on *Heller*'s list of "presumptively lawful" firearm regulations, that view finds no support in *Bruen.* The regulation at issue in *Bruen* required "law-abiding citizens" with "ordinary self-defense needs" to show "proper cause" in order to obtain a license to carry a handgun publicly in New York. *See, Bruen*, 142 S. Ct. at 2150. Restrictions on public carry, such as the one at issue in *Bruen*, were not included among *Heller*'s list of presumptively lawful regulations. *See, Heller*, 554 U.S. at 626-27, n.26 (listing as presumptively lawful "prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms"). Defendant's view of *Bruen*'s impact is overly broad, misses the mark, and misstates the plain meaning and intent of the *Bruen* holding.

Of particular note, contrary to Defendant's assertions, courts across the country denying post-*Bruen* challenges to § 922(g)(1) have observed that "the *Bruen* majority opinion makes abundantly clear that *Heller* and *McDonald* stand as controlling precedents" and that *Bruen* itself is "consistent" with those precedents. *See, United States v. King*, 634 F. Supp.3d 76, 83 (S.D.N.Y. 2022) (citing *Bruen*, 142 S. Ct. at 2134); *United States v. Davila*, 2023 WL 5361799, at *2 (S.D.N.Y. Aug. 22, 2023); *Hampton*, 2023 WL 3934546, at *10, n.14, 11 (explaining that "*Bruen* reaffirms the holdings of *Heller* and *McDonald*," collecting excerpts from *Bruen* that exemplify this reaffirmation, and noting that courts "around the country" have concluded the same). More

specifically, and of particular significance here, courts interpreting § 922(g)(1) in *Bruen*'s wake have observed that, "the Supreme Court's decisions in *Heller*, *McDonald*, and *Bruen* have left the *felon disarmament laws* undisturbed." *United States v. Barnes*, 2023 WL 2268129, at *1 (S.D.N.Y. Feb. 28, 2023) (emphasis added); *Accord*, *Davila*, 2023 WL 5361799, at *2 (". . . as three members of the *Bruen* majority separately emphasized, the Supreme Court's holding did not 'disturb [ ] anything that [it] said in *Heller* or *McDonald*." (citing *Bruen* at 2157 (Alito, J. concurring))); *United States v. Garlick*, 2023 WL 2575664, at *4 (S.D.N.Y. Mar. 30, 2023) ("There is nothing in *Bruen* that suggests the Court saw that explication of the reach of the Second Amendment as disturbing the Supreme Court's dicta that 'longstanding prohibitions on the possession of firearms by felons' remain constitutional."); *Hampton*, 2023 WL 3934546, at *11 ("Throughout its modern Second Amendment jurisprudence, the Supreme Court has consistently limited its recognition of Second Amendment rights to '*law-abiding* citizens' and has noted its approval for felon-in-possession laws."); *King*, 634 F. Supp.3d at 83 (S.D.N.Y. 2022) ("The Supreme Court unequivocally validated the felon disarmament laws in *McDonald*[] and *Heller*[], twice reassuring that its decisions interpreting the Second Amendment should not 'be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]'") (quoting *Heller*, 554 U.S. at 635).

While it "may be true" that this Supreme Court authority constitutes dicta, "that debate is of little consequence" because, in 2013, the Second Circuit "turned what [Defendant] characterizes as 'dicta' in *Heller* and *McDonald* into binding precedent" when, in *United States v. Bogle*, 717 F.3d 281, 281-82 (2d Cir. 2013) (*per curiam*), the Circuit upheld the constitutionality of § 922(g)(1) under those two decisions. *Hampton*, 2023 WL 3934546, at *12 (analyzing *Bogle* in rejecting similar argument in the face of a post-*Bruen* challenge to § 922(g)(1)); *Accord*, *Davila*,

2023 WL 5361799, at *2 (upholding the constitutionality of § 922(g)(1) under *Bogle*'s "binding" precedent).

Significantly, as the Government notes here, *Bogle* did not apply the "means-end interest balancing" analysis rejected by *Bruen* in affirming § 922(g)(1)'s constitutionality. *See*, Opp. at 9; *Hampton*, 2023 WL 3934546, at *12; *United States v. Harrison*, 2023 WL 4670957, at *8 (N.D.N.Y. July 20, 2023)(concurring with *Hampton*). Instead, "the Second Circuit reasoned purely from language in *Heller* and *McDonald* expressly affirming 'longstanding prohibitions on the possession of firearms by felons.'" *Hampton*, 2023 WL 3934546, at *12 (citing *Bogle*, 717 F.3d at 281 (internal quotation marks omitted)); *Harrison*, 2023 WL 4670957, at *7 (noting that, in *Bogle*, "a unanimous panel of the Second Circuit relied on the 'assurances' from *Heller* and *McDonald* to 'join every other circuit to consider the issue in affirming that § 922(g)(1) is a constitutional restriction on the Second Amendment rights of convicted felons'") (citing *Bogle*, 717 F.3d at 281-82).

Accordingly, this Court finds that § 922(g)(1) is constitutional on its face and does not violate the Second Amendment under established Second Circuit precedent. Defendant's challenge to the statute as applied "also has no merit [as she] has [multiple] felony convictions, . . . which are crimes punishable by imprisonment for a term exceeding one year [that] fall squarely within [§] 922(g)(1)." *King*, 2022 WL 5240928, at *5 (internal citations and quotation marks omitted). As such, "[§] 922(g)(1) is not unlawful as applied to [her]" either. *Id.*; *Harrison*, 2023 WL 4670957, at *8 (denying defendant's motion to dismiss indictment and finding § 922(g)(1) constitutional as applied to defendant with prior "federal drug conviction").

Thus, for the reasons set forth above, this Court joins the other district courts in this Circuit that have considered post-*Bruen* challenges to § 922(g)(1)'s constitutionality in light of *Bogle* in

finding that "nothing in *Bruen* [ ] alters the rationale of *Bogle*" and, "[w]ith *Heller* and *McDonald* still in full force after *Bruen*, *Bogle* remains binding precedent within this Circuit on the constitutionality of [§] 922(g)[(1)]." *Garlick*, 2023 WL 2575664, at *5 and *Hampton*, 2023 WL 3934546, at *1, 12 (respectively); *See also, Harrison*, 2023 WL 4670957, at *8 (finding that the district court cases in this Circuit "persuasively demonstrate that *Bogle* remains binding precedent in this Circuit on the constitutional question of felon disarmament under § 922(g)(1)"); *King*, 634 F. Supp.3d at 83 (referencing *Bogle*'s precedential effect in denying defendant's motion to dismiss the indictment charging a § 922(g)(1) violation); *Barnes*, 2023 WL 2268129, at *2 (same); *Davila*, 2023 WL 5361799, at *2 (same).

In finding § 922(g)(1) constitutional under Second Circuit precedent, this Court joins the courts in this Circuit that have ended their analysis of § 922(g)(1)'s constitutionality based on *Bogle*'s binding effect and it need not engage in *Bruen*'s textual and historical inquiries. *See, e.g.*, *Garlick*, 2023 WL 2575664, at *5; *Barnes*, 2023 WL 2268129, at *2; *King*, 634 F. Supp.3d at 83.

II. *Range*

This Court concludes by briefly addressing Defendant's request that this Court "reach the same conclusion here" that the Third Circuit did in *Range v. Attorney General*, a recent decision in which the Third Circuit, sitting *en banc*, sustained a post-*Bruen* constitutional challenge to § 922(g)(1) as applied to an individual with a prior nonviolent felony. 69 F.4th 96, 106 (3d Cir. 2023); Reply at 3-14. Defendant contends that "*Range* persuasively applies *Bruen* to a situation similar to [her own]" and asks this Court to undertake an individualized assessment of her background and criminal history to determine the extent to which she poses a danger to the public. Reply at 3, 5, 9.

Defendant spills much ink in urging this Court to follow *Range*, a decision that: (1) is not

binding in this Circuit; (2) is an outlier amongst courts across the country analyzing post-*Bruen* constitutional challenges to § 922(g)(1); and (3) most importantly, was limited in precedential value by the *Range* Court itself to the specific and unusual facts of that case, which, contrary to Defendant's contention, bear absolutely no similarity to the facts before this Court. *Id.* at 1; *See*, *Range*, 69 F.4th at 106 ("Our decision today is a narrow one."). For these reasons, as well as the foregoing analysis, this Court declines Defendant's invitation to follow *Range*.

Range does not support Defendant's contentions that she is similarly situated to the defendant in *Range* because that individual had a very different criminal background and a most peculiar situation in that his offense of conviction actually was classified under Pennsylvania law as a misdemeanor with a possible maximum five-year prison sentence. "Unlike the food stamp fraudster [in *Range*] who [pled] guilty to an unusual state law *misdemeanor*, [Defendant's] prior misconduct [here] involves…actual federal felon[ies]:" identity theft and identity fraud. *See*, *Harrison*, 2023 WL 4670957, at *8 (distinguishing the defendant in *Range* from a defendant with an "an actual federal felony," particularly a "federal drug conviction") (emphasis added); Mot. at 1; Opp. at 1-3.

Moreover, as noted above, the Third Circuit's *en banc* decision in *Range* goes against the weight of the authority analyzing § 922(g)(1)'s constitutionality in *Bruen*'s wake. As another district court in this Circuit observed in a recent, post-*Range* decision upholding the constitutionality of § 922(g)(1), "the list of post-*Bruen* precedent that is actually favorable to defendant's Second Amendment text-and-history argument basically begins and ends with the *en banc* opinion in *Range*." *Harrison*, 2023 WL 4670957, at *8. While the Second Circuit has not spoken on the issue yet, "multiple [other] circuits [already have] considered and rejected" *Bruen* challenges to § 922(g)(1) and "[s]o too have about 140 district courts." *Id.* at *6. Most notably, in

United States v. Jackson, the Eighth Circuit declined the defendant's invitation to consider his personal history to determine the statute's validity as applied to him and, instead, upheld § 922(g)(1), both facially and as applied to nonviolent felons, citing the assurances of *Heller*, *McDonald*, and *Bruen* as well as "the history that supports them." 69 F.4th 495, 501-02, 504-06 (8th Cir. 2023). This Court concurs with the Eight Circuit's analysis.

Defendant attempts to minimize the precedential value of *Jackson* contending it "relied on the now-defunct reasoning of the panel opinion in *Range*, overturned by the *en banc* court" several days after the Eighth Circuit decided *Jackson*. However, this argument fails for two reasons. First, *Jackson* engaged in its own survey of our Nation's historical tradition of firearm regulation and, in doing so, it considered the *Range* panel's historical inquiry as well as its own, finding that § 922(g)(1) passes muster under either inquiry. *Id.* at 503-506. Second, and most fatally to Defendant's attack on *Jackson's* precedential value, after the *en banc* decision in *Range* was issued, the Eighth Circuit affirmed its decision in *Jackson* in upholding § 922(g)(1)'s constitutionality in the face of yet another *Bruen* challenge involving an individual with prior, nonviolent felony convictions. *See, United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023).

Furthermore, the Fifth Circuit, while not directly speaking on the issue or undertaking its own historical analysis, has rejected several post-*Bruen* challenges to § 922(g)(1)'s constitutionality, albeit on plain error review, both before and after *Range*. *See, e.g.*, *United States v. Garza*, 2023 WL 4044442, at *1 (5th Cir. June 15, 2023) (finding no plain error on appeal of § 922(g)(1) conviction because "there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional on its face or as applied and because it is not clear that either *Bruen* or *Rahimi* dictate such a result" either); *United States v. Johnson*, 2023 WL 3431238, at *1-2 (5th Cir. May

12, 2023) (finding no plain error on appeal of § 922(g)(1) conviction because "there is no binding precedent explicitly holding that § 922(g)(1) is unconstitutional and because it is not clear that Bruen dictates such a result" either); *United States v. Pickett*, 2023 WL 3193281, at *1 (5th Cir. May 2, 2023) (same).

On the district court level, the landscape is similar. As noted above, district courts "both in this Circuit and around the country" have continued to "uphold [§] 922(g)(1) in the wake of *Bruen*." *See, e.g.*, *Hampton*, 2023 WL 3934546, at *10, n.14 (collecting examples); *Harrison*, 2023 WL 4670957, at *6 (stating that "multiple [other] circuits have already considered and rejected" *Bruen* challenges to § 922(g)(1)'s constitutionality and "[s]o too have about 140 district courts."). Within this Circuit alone, district courts have held § 922(g)(1) constitutional in response to both facial and as applied challenges raised in *Bruen*'s wake, both before and after *Range*. Notably, some courts in this Circuit have held the statute constitutional under *Bogle*, while others have held it constitutional under *Bruen*'s historical analysis. *See, e.g.*, *Davila*, 2023 WL 5361799, at *1-5 (rejecting *Range* and denying motion to dismiss indictment, finding § 922(g)(1) constitutional in light of *Bogle* and under *Bruen*'s historical inquiry); *Harrison*, 2023 WL 4670957, at *8 (same as applied to defendant with prior "federal drug conviction"); *Hampton*, 2023 WL 3934546, at *10-13, n.14 (rejecting *Range* and denying motion to acquit after finding § 922(g)(1) constitutional in light of *Bogle*); *Garlick*, 2023 WL 2575664, at *4-5 (denying motion to dismiss indictment, finding § 922(g)(1) constitutional on its face and as applied to defendant in light of *Bogle*); *Barnes*, 2023 WL 2268129, at *1-2 (same); *King*, 634 F. Supp.3d at 82-83 (same as to facial challenge); *United States v. Martin*, 2023 WL 1767161, at *2-3 (D. VT. Feb 3. 2023) (denying motion to dismiss indictment after finding § 922(g)(1) passes muster under *Bruen*'s historical inquiry); *Campiti v. Garland*, 2023 WL 143173, at *3-5 (D. CT. Jan. 1, 2023) (finding

§ 922(g)(1) consistent with "the Nation's historical tradition of firearm regulation").

Defendant urges that "[t]his Court simply cannot ignore *Bruen* or the numerous circuit and district court cases recognizing that it dramatically changed the Second Amendment analysis." Reply at 2, n.1 (collecting cases). Ironically, however, Defendant ignores the overwhelming body of case law set forth above that has found § 922(g)(1)'s constitutionality undisturbed and even is supported by *Bruen* itself and the historical inquiry that it demands. Moreover, the "numerous circuit and district court cases" that Defendant cites to consist of *eight* nonbinding decisions from outside the Second Circuit, only *two* of which concern § 922(g)(1). *Id.*

One such decision concerning § 922(g)(1) is *Atkinson v. Garland*, a Seventh Circuit decision that remanded a § 922(g)(1) challenge for reconsideration by the district court, finding that both the government and defendant lacked sufficient detail in their historical analyses for it to reach a conclusion. 70 F.4th 1018, 1020-24 (7th Cir. 2023). Notably, however, the *Atkinson* Court stated that it had "no doubt" that the "historical details" the government did provide "may prove relevant on remand" and went as far as to state that, "on remand, [the government] may also develop its contention that the plain text of the Second Amendment does not protect felons and other offenders impacted by § 922(g)(1)." *Id.* at 1022, 1024.

The other decision concerning § 922(g)(1) is *United States v. Bullock*, a district court decision from the Southern District of Mississippi that appears to be an outlier amongst many other district courts in the Fifth Circuit that have found § 922(g)(1) constitutional after *Bruen*. 2023 WL 4232309 (S.D. MS. June 28, 2023); *See, e.g., United States v. Robinson*, 2023 WL 4304762, at *2 (N.D. TX. June 29, 2023) (finding § 922(g)(1) "consistent with the Nation's historical tradition of firearm regulation" and noting that "despite numerous challenges to section 922(g)(1) in the wake of *Bruen*, the Court is aware of only two decisions" finding the statute unconstitutional: *Range* and

Bullock).

In sum, the Court finds unpersuasive and rejects Defendant's arguments that it should follow *Range*, an outlier decision, that not only is inconsistent with *Bruen* for the reasons set forth in Section I above, but also is not binding precedent for courts in this Circuit.

CONCLUSION

For the reasons set forth above, Defendant's motion to dismiss the Indictment is denied.

SO ORDERED.

Dated: Brooklyn, New York
September 15, 2023 (*nunc pro tunc* to
September 12, 2023)

/s/
DORA L. IRIZARRY
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	: 22-CR-00473(DLI)
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	:
-against-	: United States Courthouse
	: Brooklyn, New York
	:
	:
	: Friday, August 2, 2024
KARA STERNQUIST,	: 2:15 p.m.
	:
Defendant.	:
	:

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

(In open court.)

THE COURTROOM DEPUTY: All rise.

(Judge DORA L. IRIZARRY entered the courtroom.)

THE COURT: Good afternoon. Please have a seat.

(Defendant entered the courtroom.)

THE COURTROOM DEPUTY: Criminal cause for a sentencing, Docket Number 22-CR-473, United States versus Kara Sternquist.

Please state your appearances.

MR. BUFORD: Good afternoon, Your Honor.

It's Turner Buford for the United States.

THE COURT: Good afternoon.

MR. BUFORD: And I'm joined at counsel table by Officer Brian Woo from Probation.

USPO WOO: Good afternoon.

THE COURT: Good afternoon.

Please a seat.

MS. GLASHAUSSER: Good afternoon, Your Honor.

Allegra Glashausser representing Ms. Sternquist, who is seated next to me.

THE COURT: Good afternoon to both of you.

I am going to ask everyone, please, to remain seated for this proceeding.

Good afternoon to all of our observers in the audience.

We are here today for sentencing on Ms. Sternquist's plea of guilty to Count Three of the Indictment. And it is my practice that before we get into the sentencing hearing proper, that I will explain how we are going to proceed during the hearing.

I am sure, Ms. Sternquist, that your attorney has explained to you what's going to happen today, but I just want to make sure that you understand the process, and that it is clear also for our observers in the audience.

So, the first thing that I will do is that I am going to place on the record everything that I have received and considered with respect to sentencing for two reasons that are interrelated.

That is so that all of you are assured that I, in fact, have received everything that I should have received in consideration for sentencing; and related to that, so that all of you are assured that all of you have received what I have received, so we are all working with the same information.

Next, to the extent that there are any outstanding objections to the pre-sentence report that don't require the holding of a hearing, and I don't see anything here that does require a hearing, I will resolve those outstanding objections to the pre-sentence report.

Next, as I am required to do under the current state of federal sentencing law, I will determine what the

sentencing guideline range is that applies in this case.

Now, the sentencing guidelines have to be considered under the current state of federal sentencing law, but they are not binding. They are not mandatory. They are just the starting point.

The Court has to consider policy considerations within the guidelines, as well as any departures that there might be within the guidelines, but the Court also has to consider what are called 3553(a) factors, which I'm sure will be discussed more during the hearing.

And because I have all these other things to consider, I will then turn the floor over to the attorneys, so that they can put on the record what their sentence recommendation is and the reasons for it.

The law also gives you a right, Ms. Sternquist, to make a statement prior to the imposition of sentence. And if you wish to make a statement, I will be happy to give you that opportunity.

So, it is not until all of that has happened that I will impose sentence.

Do you understand that process, Ms. Sternquist?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Thank you.

All right. So, this is what I have received and there is quite a bit.

There is the pre-sentence report, along with the sentence recommendation from Probation that was disclosed March 29th of 2024.

The Government's objections to the pre-sentence report, dated April 11th of 2024.

Defendant's objections to the pre-sentence report, dated April 12th of 2024, and there were a number of exhibits that were attached to that document.

There is the Government's response to defendant's objections to the pre-sentence report, dated April 26th of 2024.

Defendant's response to the Government's objections to the pre-sentence report, dated April 26th of 2024.

The Government's reply to the defendant's letter of April 26th of 2024.

And defendant's reply to the Government's opposition, and that letter was dated May 3rd of 2024.

There is the addendum to the pre-sentence report from Probation addressing the various objections that were made to the pre-sentence report.

There is the Government's sentencing memorandum of May 28th, 2024.

The defendant's sentencing memorandum, the -- a request was made, and that was dated June 4th of 2024. Request was made by the defense to file under seal, and that

was request was granted.

There were a number of exhibits that were attached to defendant's sentencing memorandum, including conversations, notes of conversations with Ms. Sternquist, various letters from supporters or character references for Ms. Sternquist.

Some portions of medical records. I know Ms. Sternquist's records are quite voluminous, but there were portions that were attached, as well as some photographs and snapshots of Facebook posts and photographs of Ms. Sternquist's condition.

In addition, on June 4th, there were additional objections. This was to the addendum to the pre-sentence report that was filed by defense counsel.

And on June 10th, there was a cover letter with additional medical records that had just been obtained by defense counsel.

And I believe those have been provided to Probation, correct, Ms. Glashausser, the --

MS. GLASHAUSSER: I have --

THE COURT: -- those from June?

MS. GLASHAUSSER: I have provided Probation medical records. He's nodding his head.

THE COURT: Okay.

MS. GLASHAUSSER: I just don't remember what date.

Thank you, Your Honor.

THE COURT: All right. Okay. I just wanted to make sure.

There was also a supplemental letter that was provided by the defense. This was June 14th, one supplemental letter from a character reference for Ms. Sternquist from Hannah Simpson, along with some photographs; and as well as additional argument by the defense in opposition to the finding that defendant possessed a machine gun, under the sentencing guidelines, based on a decision rendered by the United States Supreme Court in Garland versus Cargill on that date, June 14th of 2024.

In light of that letter, the Court had set a briefing schedule for -- on that issue, and in response the Government filed an opposition letter dated July 8th of 2024. Defendant replied on July 15th of 2024. And there was a second addendum to the pre-sentence report addressing the Cargill issue and the other more recent objections that were raised by the defense, and incorporating the supplemental medical records that were provided.

Also to be attached to the Judgment and Commitment Order is the Preliminary Forfeiture Order that was endorsed by the Court on March 13th of 2024. There had been a briefing on the issue of forfeiture, but that really does not affect us here today.

That is everything that I have received in

connection with sentencing.

Is that everything I should have from the Government, Mr. Buford?

MR. BUFORD: Yes, Your Honor.

THE COURT: From Probation?

USPO WOO: Yes, Your Honor.

THE COURT: And, Ms. Glashausser, from the defense?

MS. GLASHAUSSER: Yes, Your Honor.

THE COURT: Thank you.

Ms. Sternquist, I know it's a lot of paper, did you have an opportunity to review all of these with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you familiar with the objections that were made on your behalf to the pre-sentence report?

THE DEFENDANT: I think as much as I can, Your Honor.

THE COURT: Okay. But you did discuss them with your attorney?

THE DEFENDANT: Yes.

THE COURT: Okay. So, those objections aside, taking into consideration the rest of what's in the pre-sentence report, is there anything in there that you think needs to be corrected?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. Thank you.

The objections that were made to the pre-sentence report, both on behalf -- taking together the objections made by both the Government and the defense, were quite extensive and I have to commend our Probation officer. I thought he did a very thorough job of outlining everyone's position and outlining the Government's response and reasons there for.

I have carefully reviewed the addendum to the pre-sentence report and concur with the conclusions that were made by Probation, and so -- for all of the reasons that were stated therein. And I do note that that also did include not only incorporating objections that were made by the Government, but also certain objections that were made by the defense.

So, the pre-sentence report is either not changed or amended in accord with that addendum to the pre-sentence report.

Now, with respect to the Cargill objections that were raised, I did review all of the arguments that were made by both sides, and I have also reviewed the addendum that was prepared by Probation. Again, I do commend Probation for its thorough addressing of the issue, and the additional -- and incorporating all of the additional objections that were made.

And I do note that with respect to paragraphs 52, 57, 66, and 83, all of the corrections that were sought by the defense will be incorporated in the pre-sentence report.

I do agree with the ultimate conclusion by Probation that is incorporated in the second addendum with respect to the application of Cargill, and the position that's taken by the Government that, in essence, Cargill really has no effect here.

And I did just have a brief opinion that I wanted to read into the record with respect to the issue, only because this is a novel issue really.

So, for clarification, on June 14th of 2024, Ms. Sternquist filed a letter objecting to the classification of one of the firearms, which was Exhibit 22 here, as a machine gun in light of the Supreme Court decision rendered that date on -- in Garland versus Cargill, reported at 602 U.S. 406.

Defendant's document will be referred to as the letter that's docket entry number 114.

The Government responded in opposition on July 8th, and the defendant replied on July 15th.

Defendant's objection is overruled for the following reasons:

As stated, at issue here is firearm, Exhibit 22, which was examined by a firearms enforcement officer or FEO, from the Bureau of Alcohol, Tobacco, Firearms and Explosives or ATF.

The FEO observed that Exhibit 22 contains a

three-position safety selector allowing it to be placed in the unmarked, automatic or 3 o'clock position, and in which position Exhibit 22 function tests as a machine gun.

Exhibit 22 was assembled with an M-16 type bolt carrier, with the components to fire in three-round bursts.

The FEO conducted four test fires of Exhibit 22 in the automatic position. The first test successfully fired two rounds automatically, with a single pull of the trigger. The second and thirds tests only fired one round with a single pull of the trigger, but the FEO observed a light primer strike on the back of the unfired rounds. The fourth test resulted in only two rounds being fired automatically with a single pull of the trigger, with the third unfired round also having a light primer strike.

The FEO attributed the unfired rounds and the light primer strikes to the hammer-follow design of the firearm, which can prevent the hammer from striking with sufficient force to detonate the primer of the cartridge.

Hammer-follow AR type firearms that shoot automatically are classified as machine guns.

Taking all of this into consideration, the FEO concluded that Exhibit 22 is a machine gun.

Defendant contends that Exhibit 22 should not be characterized as a machine gun following the Supreme Court's decision in Cargill. The Government opposes, arguing that

Cargill has no bearing on the classification of Exhibit 22 as a machine gun. Probation in its second addendum concurs with the Government's conclusion, as does this Court.

A machine gun is defined as "any weapon which shoots, is designed to shoot or can be readily restored to shoot automatically more than one shot without manual reloading by a single function of a trigger." 26 United States Code Section 5845(b.)

In Cargill the Supreme Court rejected the ATF's rule that interpreted Section 5845(b) to include bump stocks as machine guns because firearms with bump stocks "cannot fire more than one shot by a single function of the trigger." 602 U.S. at 415.

"Between every shot the shooter must release pressure from the trigger and allow it to reset before re-engaging the trigger for another shot. A bump stock merely reduces the amount of time that elapses between separate functions of the trigger." That's Cargill at 421.

"The Supreme Court was clear that only the trigger assembly is relevant when analyzing Section 5845's requirement that multiple rounds be fired with the single function of a trigger. The statutory definition hinges on how many shots discharge when the shooter engages the trigger." That's Cargill at 422.

A plain reading of Cargill and the statute reveals

that Cargill does not alter the characterization of Exhibit 22 as a machine gun. Exhibit 22 had a selector that could be placed in a distinct automatic firing position and it contained the components to fire in three-round bursts. More importantly, it fired more than one round automatically with a single pull of the trigger in two test fires. The misfires were attributable to the hammer-follow design.

The light primer strike in each of the unfired cartridges indicates that a single function of the trigger caused the firearm to operate in an automatic fashion. If the firearm was not capable of automatic fire, the hammer would not have been re-engaged and there would not have been light primer strikes.

Defendant's claim that Exhibit 22 never fired automatically is unavailing. There is no support for the claim that the two instances in which Exhibit 22 fired multiple rounds with a single function of the trigger were misfires.

Instead, it is more likely that after numerous attempts, the ATF -- it counters the argument by defendant that instead it is more likely that after numerous attempts the ATF, essentially, got the gun to misfire.

Instead, it appears more likely that the instances where it fired one round in the automatic position were the true misfires, considering the hammer-follow and light primer

strikes. Contrary to defendant's assertion, Exhibit 22 did fire automatically, unlike bump stocks, which require more than a single function of the trigger.

"For bump stocks, a shooter must do more than pull the trigger. The shooter must actively maintain just the right amount of forward pressure." 602 U.S. at 424.

Exhibit 22 did not need anything more than the single function of the trigger to fire more than one round. And see that ATF report at 6.

Defendant's contentions that the ATF report is silent about why Exhibit 22 fired only one round at times or whether the agent used a different amount of pressure on the gun to get the gun to shoot two bullets are red herrings.

As an initial matter, the ATF report was not silent as to why it sometimes only fired one round. The hammer-follow design is not always effective at detonating the cartridge. See the ATF report at 5.

In any event, Section 5845 does not require such analysis. All that matters is that the firearm discharged more than one shot automatically by a single function of the trigger and that the firearm was designed to do so.

Finally, Exhibit 22's lack of an auto sear does not mean that it is not a machine gun. The Supreme Court's discussion of auto sears, that's S-E-A-R-S, was restricted to a single footnote; and even there the auto sear clearly was

described as a sufficient, but not necessary, characteristic for a machine gun. See Footnote 4 in Cargill at 602 U.S. 420.

As the Government notes, Exhibit 22 is capable of automatic fire without an auto sear because of the hammer-follow design. Cargill confirms the characterization of Exhibit 22 as a machine gun because it fired more than one round automatically with a single function of the trigger. Accordingly, defendant's objection is overruled.

With these rulings, the sentence guideline range as calculated by Probation is correct. There is a total offense level of 21, a Criminal History Category of IV, and that provides a sentence guideline range of 57 to 71.

I just do want to note one thing.

I know that there was a tremendous amount of discussion about whether or not the 15 cylindrical objects were actually silencers or not silencers. At the end of the day, I agree with the Government, Probation agrees with the Government, that, in fact, those did qualify as silencers and, therefore, firearms under the guidelines and under the statute.

Nonetheless, even if those silencers did not qualify as firearms because there were already eight firearms that were recovered here, the four-point enhancement would still apply and there would be no change to the total offense level.

Aside from the objections that have already been

made and addressed, are there any additional objections by the Government?

MR. BUFORD: Not from the Government, Your Honor.

THE COURT: Ms. Glashausser.

MS. GLASHAUSSER: Your Honor, if I may. I'd just like to make a brief record with respect to the rulings that you've made. And I understand --

THE COURT: No, your papers have been very thorough and very repetitive.

MS. GLASHAUSSER: But, Your Honor, with respect -- you just said that it -- the silencer decision wouldn't impact the guidelines.

But, respectfully, that's -- I just want to make sure that Your Honor also saw my argument with respect to the partial frames and receivers --

THE COURT: I did, and it's overruled.

MS. GLASHAUSSER: And I just want to make sure in the record because this case came out after Your Honor told me not -- I couldn't put in additional cases, that the Supreme Court subsequent to that decided in Loper Bright v Raimondo that Chevron deference was no longer valid.

And with respect to reviewing the ATF's regulation, which was interpreting the statute, which the Government relies on with respect to that partial frame and receiver, that the new Supreme Court case, which I had kind of mentioned

in my argument as something that was pending, has been decided. And that --

THE COURT: I considered it and rejected it.

MS. GLASHAUSSER: Thank you, Your Honor.

And just with respect to the machine gun argument, I just want to make sure that the record is clear that I wasn't solely objecting on Cargill. I had made an argument regarding Ms. Sternquist's lack of intent with respect to the machine gun from my initial PSR objection.

So, it wasn't simply -- Cargill was merely something else that supported that argument, but that objection was not --

THE COURT: I considered every argument that you raised in connection with the application of any of those enhancements and definitions.

MS. GLASHAUSSER: Thank you, Your Honor.

With respect to additional guideline objections --

THE COURT: Yes.

MS. GLASHAUSSER: -- we did object, as well, to the Criminal History Category calculated in the pre-sentence report.

THE COURT: Which I also rejected.

MS. GLASHAUSSER: Respectfully, Your Honor, just so I am clear, is there --

THE COURT: It was fully explained in Probation's

addendum, the initial addendum to the pre-sentence report, very thoroughly addressed. And I concur with that analysis.

MS. GLASHAUSSER: I just want to be sure because one of our objections relates to Ms. Sternquist's petty larceny conviction.

THE COURT: I understand, and that point gets assessed, as explained in the addendum.

MS. GLASHAUSSER: But the --

THE COURT: There is no need for us to spend two hours here rehashing what's already been submitted by Probation --

MS. GLASHAUSSER: I understand.

THE COURT: -- that I have adopted, which carefully considered both the arguments that the Government made and that defense counsel made.

MS. GLASHAUSSER: Understood, Your Honor.

THE COURT: The point gets counted.

Anything else?

MS. GLASHAUSSER: Nothing that's not in my papers, Your Honor.

THE COURT: Okay. Thank you.

As amended by way of addendum, the Court adopts the pre-sentence report.

So, we are at the point where I will turn the floor over, if you will, to the lawyers, so that they can discuss

their sentence recommendations and reasons for it.

We'll start with Mr. Buford for the Government.

And then, Ms. Glashausser, we'll hear from you.

And then, Ms. Sternquist, if you wish to make a statement, I'll be happy to hear from you.

Mr. Buford, whenever you're ready.

MR. BUFORD: Thank you, Your Honor.

We don't have much more to say than what's in our papers. Notwithstanding the defendant's two prior felony convictions, she set about acquiring the parts necessary to make multiple firearms, including assault-style rifles. Not just one gun, but multiple guns, and one of which, in fact, did fire automatically.

This is alarming conduct that was, obviously, undertaken deliberately. And when considered in conjunction with the fact that the defendant was also in possession of law enforcement credentials with her name and identity -- again, multiple such credentials — it's hard to think of a benign explanation for what was happening.

The defense has suggested that this was for self-defense, but a couple of things, in our view, cut against that. One is just the number of the guns. The other is the presence of the silencers, which, as we point out in our papers, are not defensive weapons. These are weapons that are offensive in nature, designed to muffle the sound of gunshots

so that they go undetected.

When one looks, as we say in our papers, at the overall trajectory of the defendant's criminal history, the offenses appear to be increasing in severity. And -- and for that reason, we believe a guidelines sentence is appropriate.

We acknowledge the defendant's health situation and history here is a mitigating factor that is fair for the Court to consider, but on balance, our assessment of the seriousness of this conduct ultimately weighs in favor of a guidelines sentence.

THE COURT: Thank you.

Ms. Glashausser.

MS. GLASHAUSSER: Thank you, Your Honor.

Ms. Sternquist has been shackled to a bed in a nursing home or a hospital for 23 months now. It has been, I think, indescribably hard for her, both physically and mentally. She had a life-threatening infection at the beginning of this case because of MDC's lack of care, and then the way they tried to provide care, that is likely to impact her future ability to get gender affirming surgery.

She came to this case partially paralyzed, but with the hope of regaining feeling in -- in her lower extremities, but she's only had physical therapy while shackled, and a very limited amount. She's made almost no progress in these two years.

She's in constant pain. And for the past, approximately a month, where she's been moved around, she's just missed many, many days of pain medication. Now she's having a lower dose that kind of comes when it comes, and it is very unclear how to fix that problem.

Meanwhile, she has a bowel tear that's untreated. She's left sitting in her own urine and feces for hours on end, and she's completely by herself. She's in conditions that would be like being in solitary confinement, or I should say she's by herself, except she is under watch twenty-four hours a day by people who are not talking to her. So there's no social interaction, but are watching her. So, there's no privacy.

Psychologically, this has been extremely scary and debilitating, and I've watched her mental health suffer. Obviously, we've all watched her physical health suffer, but her mental health, too. It's been so hard.

And I've struggled with this case because it's hard to really put it into words. Even just visiting the facilities -- the facilities that she's been shackled in have been hard for me. They are not places that anyone would want to be.

These things are all extremely alarming to me, that that's how our system was set up to help somebody that really needed physical care while she was incarcerated. But

importantly, my hope for Your Honor is today is that because of how hard it has been, this 23 months has had a really outside effect on punishment and deterrence. And I know that the Court has considered those things in the COVID era. This is different, and in many ways way worse.

As Ms. Sternquist was explaining it to me just today in talking about sentencing, she was saying, I cannot do this again. And she -- she means so much by that, not just that she cannot do something to land herself in this position, but that she just can't physically put herself through this sort of circumstance again.

That is something that I think Your Honor should really strongly consider in assessing the goals of sentencing, both the ones about punishment and deterrence, but also the ones for the need for effective treatment. What Ms. Sternquist really needs is treatment on the outside, in the community, where she is able to do physical therapy where she can actually try to move outside of her room. I mean, right now she is just at standing up, but with that goal in mind.

Briefly to address her -- her -- her conduct and while we're here, the Government just said that it was hard to think of an explanation and contemplate that this was self-defense, but we have put in so much information to show that this was for self-defense. And it's surprising to me to

hear the Government still say the same things 23 months later that they had on day one --

THE COURT: Where in the statute does it provide an affirmative defense of self-defense for a felon to be in possession of a firearm?

MS. GLASHAUSSER: I apologize, Your Honor. I definitely don't mean that at all. I'm not -- I'm not -- I'm not providing an affirmative defense and I am not excusing her conduct.

THE COURT: Because I have had gang bangers sitting right there in that seat who are involved in all kinds of terrible crimes, they're going out, they're murdering people, they're assaulting people, they're robbing drug dealers and so on; and then I had to have the gun for self-defense. There is no defense there either.

MS. GLASHAUSSER: Definitely, Your Honor. And I'm not in any way suggesting that at all.

However, the Government has painted a totally different picture of what happened here than the reality.

Ms. Sternquist had guns that she, a hundred percent, should not have and were against the law and she was not allowed to have, putting aside our Second Amendment argument. But she had them out of a place of fear. She did not plan to do anything like what the Government is suggesting, speculating. And the Government knows that because they have

gone through all of her electronic devices. She had a large presence online. They have all of that information. And in all of that information, they have never pointed to anything that supports their theory.

Instead, we have presented it to Your Honor in various -- at various points in our motions and sentencing that they showed that she was scared and that she had these guns out of that fear. She never had any ammunition. She had no intention to do anything like what the Government is suggesting.

With respect to the arguments about the number of items she had, that's why I included those pictures of her home. Ms. Sternquist, and I say this affectionately, is really a quite -- she's a hoarder. Her home was full of stuff. A collector is a nice way to say it, and I think she -- she -- that's part of her personality. When she gets into something, she tends to get many of those items.

THE COURT: But she has a history of collecting law enforcement badges, false law enforcement badges for the CIA, for the DEA, Department of Defense, the Navy, DEA, DEA Task Force, U.S. Marshals, Food and Drug Administration. And in her prior convictions for the same thing, for the very same thing, two federal convictions for the same thing for having those items, in addition to fake -- the driver's licenses from different states, to having credit cards. Some of these

things were stolen. And she was selling them online.

So, it goes beyond hoarding and it goes beyond collecting.

And her Comic Con activities, her -- the play acting and all of that that she engages in, those characters, according to the letters and everything that was submitted in the defense papers are for what? For Ghostbusters, Star Trek, Dr. Who characters.

So, where in that mix are identifications for U.S. Marshals Service, another agency for which she had badges and false identification?

Hoarding does not explain that.

MS. GLASHAUSSER: So, hoarding and collecting explains the numbers, Your Honor, and that's what I'm trying to convey, that it -- that is not something that is more alarming.

And the badges aren't -- are not related to her convictions today. Those are -- that's a separate --

THE COURT: It's all relevant conduct and I can consider that, the same way that I can consider dismissed conduct.

MS. GLASHAUSSER: So, Your Honor I do not believe it's relevant conduct or conduct, but I accept Your Honor's ruling on that.

My underlying point is that Ms. Sternquist was

somebody who was afraid for her life because of her basic identity. She had been attacked on the street because she was a transgender woman. The police did not help her. She'd been attacked online, threatened with her life because of her identity, and she was scared.

And that's not -- that's not to excuse her conduct, but to explain it. And to also explain why this won't happen again.

Today, Ms. Sternquist has, and knows she has, the full support of her friends, two of whom are in the audience today. Hannah, who she hopes to live with. And her friend David, who wrote a letter to Your Honor as well. And she has many other letters, as Your Honor read. More people planned to be here, but were unable to travel for this -- just for this particular day.

But she has that support and she also knows she has it. She recognizes it and knows to rely on it, rather than getting into this sort of isolation that she found herself in before.

That conduct is not some -- is not conduct that merits the sort of sentence that the Government is requesting, that Probation is requesting, especially when considering her conditions of confinement.

I apologize, Your Honor, I just want to see what Ms. Sternquist has written to me.

(Pause.)

MS. GLASHAUSSER: Ms. Sternquist's current conditions, as dire as they have been, and her -- her -- her paralysis shortly before her arrest are also just the latest in a lifetime of extreme hardships.

Ms. Sternquist was born in jail. Her mother abandoned her when she was a toddler and she's never been able to find her.

She went to an all boys boarding school, which was extremely difficult as -- as young Kara was then, knew that she was a girl, but had to pretend to be a boy in an extremely harsh environment. When that didn't work out for her, she was sent overseas to a school where she was abused. And, yes, she had a lot of trouble and had a criminal history in the years following that.

Leading up to this case, though, she had gotten on track. She had a decade of time where she was working, had started to achieve some stability. And that is something that she can get back to, she has the tools to get back to it and she has the support to do so.

THE COURT: Well, why didn't that stability prevent her from feeling the need to go out and get parts to make ghost guns?

MS. GLASHAUSSER: Because of that fear that she had been feeling at that time, and not relying on her support

system in that time of her life.

THE COURT: And she also had an open felony case in local court for criminal mischief as a felony.

And I could tell you, having been in the state court system for 23 years, it's unusual to get criminal mischief as a felony. Over $30,000 in alleged damage to a storefront.

So, in that ten years it is not like it was unblemished. She had an open case when she got arrested here.

MS. GLASHAUSSER: Yes, Your Honor, that --

THE COURT: Which is typical. She has one case after another. While she's on bond on one case, she gets arrested for something else. She violated every term of supervised release in her federal convictions.

MS. GLASHAUSSER: So, the local case was resolved with a disorderly conduct.

THE COURT: When?

MS. GLASHAUSSER: I -- during -- it was a number of months ago, while she was at the nursing home. I facilitated that with her -- her local lawyer. I could get Your Honor the date, but I don't have it at my fingertips. It may be in the PSR objections.

But, you're right, that was in the same time period -- this is around the same time period leading up to her arrest in this case, where she had a period of doing extremely well, and was still doing extremely well at her job,

and then had this -- fell into this fear. And that's why we're here today.

But it -- I don't think it's fair to consider her young -- her much younger life, where she was getting in -- where her criminal history is coming from, where her convictions are coming from with who she is today. Because who she is today --

THE COURT: She was no child when she got the federal convictions.

MS. GLASHAUSSER: I'm not suggesting she was a child, Your Honor, but there was a ten-year -- approximately ten-year gap. Those prior convictions, she had not yet fully come out as a woman. She was homeless at a number of points. She was bouncing around between states with a complete lack of stability.

And for her, fully coming out as a woman, being able to live as herself, was an extremely important life turning point, and one that was extremely hard in her family, that her parents had a lot of trouble accepting, and were still -- her mother was still working on that when she died.

It -- Kara is writing notes to me kind of reiterating these same themes of how after her divorce that she was feeling very lonely. And that she was threatened and attacked. All of those things were leading up to the conviction here -- to the conduct, the conduct here.

Importantly, she is not -- that will not happen again, and I think there are so many reasons why not. First of all, Ms. Sternquist is now disabled, which happened shortly before her arrest in this case. Her life had dramatically changed shortly before she was arrested. She was just getting used to how to handle that, how to address her partial paralysis, how to try to get better, how -- how to live as a -- with a disability.

And then -- and then she was arrested and has now spent these 23 months with really nothing to think about, nothing but her own thoughts rattling around in her head. And occasionally, I was allowed to bring a book.

What Ms. Sternquist also said to me shortly before coming up here, Your Honor, is this time spent shackled to the bed for 23 months, it's been so dehumanizing that her real hope for today was for Your Honor to see her as a human. And not just as a human, but a full human being who is loving, who is giving, who is there for her friends who are like her family. And for Your Honor to see that really she needs to be sent back to the community, to a new home with her friend Hannah. And probably to a new rehabilitation facility, in all likelihood, where she can start to heal her body and get back on the track that she was on before.

So, I am urging Your Honor to really consider these certainly uniquely hard conditions. In my practice, I've

never experienced a case like Kara's.

And honestly, my whole office knows about it. It's just -- it's such a sad situation visiting her and seeing her there unable to move, but shackled to the bed, and in such physical dire straights. And unable to even get basic medication or medical appointments or see the doctors when she needs to.

So, I am urging Your Honor to see that that is enough in this circumstance to meet all of the goals of sentencing. And that sending her to another BOP facility, that would likely be similarly bad or bad in different ways, would serve no goals of sentencing and would just physically injure her more, while not making her better prepared to come back to the community.

Despite all of that, Kara has been working with any service that she gets. You know, at the original facility, sometimes a social worker would come and talk to her from the facility, and she always was open with them. When physical therapy came, she was always ready to do it.

She has been focused on, even in her little room, doing everything she can. Staying connected to her friends, talking to them as much as she is allowed, to make sure that she is ready to be the person that I know that she can be, that her friends know that she can be, and I hope that Your Honor can see.

THE COURT: Thank you.

Ms. Sternquist, as I said, you have a right to make a statement to the Court.

Do you wish to make a statement?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. You can take your time.

Did you write anything today?

THE DEFENDANT: It's been very difficult in the days and weeks leading up to this, because of my medication situation, for me to focus on anything to write. So --

MS. GLASHAUSSER: She planned to write something, but with the move -- with the two moves --

THE COURT: Yes.

THE DEFENDANT: It's been difficult to put anything in coherent words.

THE COURT: Okay. Just take your time.

THE DEFENDANT: But --

THE COURT: Take a deep breath and take your time.

THE DEFENDANT: -- one -- one part of the picture that's been me -- painted of me is -- one side of the picture that's been painted of me is in regards to the badges that I had. I just wanted to clarify something. I never had any ill intent. I want to make clear that I am not excusing any kind of conduct or anything, just that the picture is not what it appears to be.

I have only ever wanted to give presentations to the information security world in order to use the -- the information that I had gained when I was younger and stupider and since -- and got in trouble, to do good. To show people security flaws and things like that.

It was a career move that I was hoping to make. It was not an intention of doing something wrong, but I can under -- I can see how that picture got painted. And just -- that's just a brief side note in everything else.

I never -- I never wanted that to get confused with what's real in my life. And what's real in my life is that my mother just passed. I need to take care of my father.

I have -- I've been through every mistake that I've made, every mistake that I've made leading up to this over and over and over and over and over every day. And all I want to do is do the right thing from now on.

I just -- I just want to take care of my family while they're still there. I just -- I just want to get out and -- and be with my dad, so that we can grieve my mom. Every time I call him, he talks about how much he misses his wife. And I'm really the only thing he has of his wife to remember. I just want to be with him. I just want to be there for him.

And I just don't have it in me to make mistakes like I've made leading up to this case. Regardless of what picture

is being painted, I can't take the chance to make mistakes like this ever again. I don't have it in me physically. I don't have it in me mentally. I don't have it in me spiritually.

I cannot wind up doing more time as a criminal, especially under these kind of circumstances. It's broken me. It's broken me of any desire to do anything that I shouldn't be doing.

All I want to do is be a contributing citizen to the world, like I was trying my best to when I worked at the JCC, when I worked with Make-A-Wish Foundation, when I worked with the New York City Ghostbusters and other -- and other organizations that I was in, that I was constantly trying to give back with. I've only ever wanted to give back.

And I'm sorry. I'm sorry I let my fear run me. I'm sorry I made so many mistakes because of that fear. I -- I can't let myself be run by fear and live in fear like that ever again. It will kill me and I don't want that.

I want a long, happy life with my friends and my family. I just -- I just want to do what's right in the world. I don't want to do anything wrong. I'm sorry that I have had such a screwed-up past. I don't want to go back into that past. I want to move on.

This time it's been so lonely and so difficult, difficult on me just managing my pain. I have sat with a

Level 7 to a Level 10 pain most days I've been incarcerated during this time. And that -- living with that kind of pain and living with the inhumanity of some of the things that I've had to suffer through. I've had a stroke, I had a pulmonary embolism, a life-threatening infection; and all because of my disability and people's inability to care for me.

I -- I -- I cannot, I cannot do this again. It will kill me and I don't want that. I want to live a long, happy life doing the right thing all the time. All I want is to do the right thing.

I'm sorry that -- that -- that -- the pictures being painted are really screwed up. I -- I never intended that. And it won't ever happen again because I won't let it happen again. If I find myself living in fear because of threats, I will rely on my family and friends to help me and to protect me and keep me from making these kinds of mistakes again.

I -- I don't know what else to say, Your Honor. I just -- I just want to do good in the world. I just want to give back. I pay my taxes. I try to do my best. I try to give back to every community I can. And I'm sorry I screwed up in the middle of that.

The last ten years have been the best years of my life and I don't want to go down the road that I went through in my earlier years, when I was homeless and destitute and just didn't have anybody. That was the worst time of my life.

And I want to think that the best years are ahead of me, not behind me.

I'm very sorry, Your Honor, for every mistake I've made. I'm not always the best at making judgments, but I know that relying on my friends and family to help me make good judgments in the future will keep me off that path. And that's all I want.

That's all I have to say, Your Honor.

THE COURT: Okay. All right. Thank you.

As I noted in the very beginning of this proceeding, there is a lot that the Court has to take into consideration in determining what is a reasonable sentence in this or in any case.

We start with consideration of the advisory sentencing guidelines, even though they are not mandatory, but they are the starting point. We start with a calculation of the guidelines range.

The Court also considers any policy considerations, any departures that might be available, whether they go above the guidelines or below the guidelines.

And the Court also has to consider what are called 3553(a) factors. And those factors, very simply, are goals that Congress determined should be accomplished whenever a federal judge imposes sentence. Those goals are what we call factors, it's the same thing.

And Congress put it in a statute in Title 18 of the United States Code, Section 3553(a). That statute starts with something called a parsimony clause that says that whatever sentence the Court imposes should not be greater than necessary to achieve those goals of sentencing.

Not every goal applies in every case. For example, restitution is a goal, but restitution is inapplicable here.

The Court has considered the nature and circumstances of the offenses here, the history and characteristics of Ms. Sternquist, the defendant before the Court.

The sentence should reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

It should afford adequate deterrence to criminal conduct generally in society as a whole, that's called general deterrence. And to protect the public from any further crimes that the defendant might commit, that's called specific deterrence.

The sentence should provide a defendant with any needed educational or vocational training, medical care, and other correctional treatment in the most effective manner.

There was some discussion in the defense papers about avoiding unwarranted sentencing disparity among defendants; and in this case, would be among defendants

charged with being felons-in-possession of a firearm.

I do have to say that there was a whole laundry list of cases, but I am sure that the factual backgrounds of all of those cases is quite varied. So, it is always difficult to make a comparison when not doing a deep dive into the specific background facts of each particular case.

There is no question that the offense here is serious and this isn't just a run-of-the-mill felon-in-possession of a firearm. What we have here is a person who bought pieces online and created what are commonly called now ghost guns, which provides -- which creates a specific danger.

When those guns get out into the community, they are not traceable. They do as much damage as a regular gun. And there wasn't just one gun for self-defense, there were multiple guns.

I've already made a finding that there were silencers as well. Although not in a complete and final form, but they were capable of being adapted for such.

And given all the letters that have been written in support and testament to the intelligence and creativity of Ms. Sternquist, and apparent handiness in creating things, knowledge in welding, knowledge in working with metal, working with wood, working with all sorts of things, it is not beyond the imagination to think that — I think the estimate was what,

five minutes — under five minutes to create a silencer drilling where there was a dimple at the end.

But beyond that, the Court does have to take into consideration the circumstances here and the investigation leading up to the arrest here, and the finding of these law enforcement badges of all the different agencies I mentioned earlier. There were also passports, multiple passports.

There were also New York State drivers' licenses with corresponding credit cards or -- in other words, names of the same individuals. Those were legitimate New York State drivers' licenses that had been either reported lost or stolen. The same thing with the credit cards. And in one case with one of the credit cards, there had been some unauthorized charges or withdrawals.

So, it is beyond any understanding about how possession of any of those items had to do with the defendant's fear for her life. Especially, putting it in context of her prior convictions.

And I'm not even going to go into all the earlier convictions because, frankly, a Criminal History Category of IV underestimates the defendant's criminal history here. And she was treated rather leniently, for the most part.

But her two prior felony convictions that were in federal court were for possession of similar items, so she knew that that was illegal. She had been convicted twice of

that. Twice. What's scary about the prior two convictions is that she was selling them online.

And, in fact, in the second case, she was -- it turns out, she was selling them to a federal undercover. And in that second case -- I'll continue when you're ready to pay attention.

MS. GLASHAUSSER: We are paying attention, Your Honor. I was taking a note of what you were saying.

THE COURT: You were having conversation.

MS. GLASHAUSSER: I'm sorry, Your Honor. I was just -- I meant no disrespect in any way. I'm listening very intently and noting things down.

THE COURT: In that second case, the defendant was also selling New York State birth certificates, blank birth certificates, which the undercover managed to buy.

And in an age where we have already suffered in this country terrorist attacks, and continued to have to deal with that specter hanging over our heads, I don't understand for the life of me why people forget that we lost more than 3,000 American lives on 9/11, right here on our soil.

To have identifications like that available on an open internet market is a scary thing.

And then you add to that ghost guns that cannot be traced. And I'm sorry, but eight firearms are not for self-defense. And as I said before, it is not a defense.

There is no affirmative defense for being a felon-in-possession of a firearm. And Ms. Sternquist knew she was -- had two felony convictions.

Of concern, too, one of the letters from one of the supporters, who happens to be an employee of GSA working on secured access for federal buildings, was taking the defendant along on jobs and teaching her about secured access. And the defendant was coming up with ideas on how to fix systems and so on. As she, herself, said, fixing weaknesses.

Well, the whole idea of having phony law enforcement badges and ghost guns in the hands of somebody who is aware of security weaknesses in federal buildings is a frightening prospect.

And some of the websites that she was on were very clearly expressing anti-law enforcement sentiment. And there is no doubt that given the horrors, because they are -- concededly, they are horrors that she went through at the military academy as a kid, in the Navy, it's horrific. No one should have gone through that for any reason. But the Navy was another agency that she had phony ID badges for. And it is not a far stretch to think that she might have a slight axe to grind with the Navy or even with NYPD for their failure to protect in her time of need, which also is unconscionable, that should not have happened. As the saying goes, two wrongs don't make a right.

And you're asking the Court to take on faith, on blind faith at that, that Ms. Sternquist is going to comply with whatever conditions the Court places on her, when she has clearly demonstrated an utter lack of ability to do that.

While on bond she committed new crimes, sometimes several crimes.

She failed to comply with the conditions of supervised release in her first federal conviction, resulting in additional jail time, which is part of the reason why she got three points for that conviction. And then she got 12 months for that, plus additional jail time, four months for the violation of supervised release.

And I have to say, given my experience, twenty years on this court, it is not often that defendants get sentenced to jail time for a violation of supervised release. It takes a serious violation of the Court's trust for that to happen.

And then she has a second conviction where she's sentenced to 27 months in federal court. Again, for the same thing. And she gets violated again, this time for six months' jail time, because she couldn't comply with the conditions.

There is absolutely no doubt that the conditions at the MDC are horrible. We see that documented every day almost these days. The medical treatment is terrible. I have been on the verge of holding them in contempt myself on other cases, as counsel well knows. And I certainly have taken that

into consideration.

And, quite frankly, but for the fact that Ms. Sternquist does have the conditions that she has, I would have considered a significant upward variance from the guideline range as a sentence in this case. But she has, indeed, as counsel has stated on the record, both orally and in the submissions, suffered more than the average inmate has suffered.

That being said, a sentence of time served is not appropriate in this case under all of these circumstances. And a sentence at the lower end of the guideline range is appropriate.

And the Court imposes a sentence of 60 months, with three years of supervised release to follow, with the following special conditions:

The defendant must submit her person, property, house, residence, vehicle, papers, computers, other electronic communications or data storage devices or media or office to a search conducted by a United States Probation officer. Failure to submit to a search may be grounds for revocation of release.

The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the

defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

In addition, the defendant shall participate in a mental health evaluation; and, if necessary, a treatment program as approved by Probation, and contribute to the costs of such services rendered and/or any psychotropic medications prescribed to the degree that she is reasonably able, and cooperate in securing any applicable third-party payment and disclose all financial information and documents to Probation to assess the ability to pay.

You may not possess any firearm, ammunition or destructive device.

I am advising you, as you should be very well aware at this juncture, given the charge here, that as having now the third felony conviction, that you are a person who is prohibited from possessing a firearm. If you are found to be in possession of a firearm, you may be subjected to a sentence of up to 15 years.

If you do possess a firearm while on supervised release, you may be sentenced to additional jail time. And that sentence would run consecutive to any jail term imposed for the actual offense of being a felon-in-possession of a firearm.

I do want to say this. That, again, I have read everything that has been submitted by the parties and all the arguments made by the defense. And even if the defendant's criminal history and total offense level should be as proposed by the defense, in this Court's view, the sentence of 60 months under all of the circumstances is appropriate here.

THE DEFENDANT: You might as well sentence me to death.

THE COURT: Now, Ms. Glashausser, I did have some thoughts about recommendations to the Bureau of Prisons. I did want to make a recommendation that Ms. Sternquist be assigned to a medical facility; Devens, Butner, and I keep forgetting, there is one out in the midwest that happens to be particularly good, but I'm forgetting now the name of the facility.

But I think if, in general, I ask that she be assigned to, specifically to a medical facility, number one; and number two, that the Bureau of Prisons ensure that she is given her gender-affirming treatment and other treatment as medically necessary.

MS. GLASHAUSSER: Yes, Your Honor.

However, I would ask Your Honor to order that she, or recommend that she be at a women's medical facility. The ones you have mentioned are, I understand, only men's facilities and --

THE COURT: Oh, okay.

MS. GLASHAUSSER: -- there is a women's facility in Texas.

THE COURT: It's --

MS. GLASHAUSSER: Carswell, I believe --

THE COURT: Yes.

MS. GLASHAUSSER: -- it's a medical facility.

THE COURT: Yes. Yes, Carswell.

MS. GLASHAUSSER: And I believe there's another -- there's -- a Lexington medical facility that has a women's section as well. Those are the only two women's facilities --

THE COURT: Right. Okay.

MS. GLASHAUSSER: -- I am aware of.

THE COURT: All right. So, I will make that recommendation as to those two facilities.

And, again, the Bureau of Prisons is directed to provide her gender-affirming treatment and other treatment as necessary.

Mr. Buford, I am still concerned about the surgery business because it -- this has been going on since February. It's August, and I don't think she's been evaluated yet for the surgery.

Correct, Ms. Glashausser?

MS. GLASHAUSSER: That's right. She has a bowel tear --

THE COURT: Right.

MS. GLASHAUSSER: -- that she's had for many, many months and she has not gone to see the doctor to have what they believe is the surgery.

THE COURT: I don't understand what the delay has been.

So, if I could get a report, like, by Wednesday.

MR. BUFORD: Yes, Your Honor.

THE COURT: And tell that medical director at the MDC that if he doesn't want to be held in contempt, that he needs to get on the stick about this.

MR. BUFORD: Understood, Your Honor.

THE COURT: What's his name, Bialor?

MR. BUFORD: Dr. Bialor, yes.

THE COURT: Bialor, yes.

There is no fine, due to inability to pay.

Restitution is not applicable.

The other counts had already been dismissed previously. There are no open counts, correct?

MR. BUFORD: That's correct, Your Honor.

THE COURT: And as I said, the forfeiture order will be attached to the Judgment and Commitment Order.

You are advised, Ms. Sternquist, that you are entitled to appeal from the sentence and judgment of the Court. If you do wish to appeal, you must do so within

14 days of the final entry of judgment.

You may be entitled to be represented by counsel on appeal. If you cannot afford counsel, you may ask for counsel to be appointed for you at no cost to you. And, of course, if you cannot afford the fees and the costs of the appeal, you may ask for leave to proceed by way of poor person relief.

Ms. Glashausser, I am going to ask that you stay on for that 14-day period and file a notice on behalf of your client, if that's what she wants to do.

MS. GLASHAUSSER: Yes, Your Honor, I will.

And if now is an appropriate time, I'd like to note my objection to the sentence as both procedurally and substantively unreasonable. It is much greater than necessary.

And with respect to the guidelines --

THE COURT: You can save it for your appeal.

MS. GLASHAUSSER: Yes, Your Honor --

THE COURT: Your objection is noted.

MS. GLASHAUSSER: Just with --

THE COURT: That is the sentence of the Court.

MS. GLASHAUSSER: I understand, Your Honor.

THE COURT: You can appeal.

MS. GLASHAUSSER: Yes, Your Honor.

The Court of Appeals does look to whether there's an objection below.

And the decision with respect to the length of her sentence was based on a determination, in part, that various items did count as guns. So, those are related directly to the guidelines issues.

And I also just want to make sure that --

THE COURT: Which have been preserved for appeal, given your objections and given my rulings.

MS. GLASHAUSSER: I also just want to make sure that the Court -- I objected to the search condition in my papers, and object to --

THE COURT: You did object to the search condition, but given the fact that the internet was used to access the pieces that were purchased, and were purchased online to create the firearms, a search condition for electronic devices is most appropriate here, as is a search condition for the apartment. And it is justified by the facts of this case.

Is there anything else, Christy?

THE COURTROOM DEPUTY: I don't believe so, Judge.

THE COURT: All right.

Is there anything further from the parties?

MR. BUFORD: Not from the Government, Your Honor.

THE DEFENDANT: Just execute me.

MS. GLASHAUSSER: Your Honor, Ms. Sternquist has not been getting her medications at the facility. So, if Your Honor could, in addition -- I appreciate the order about her

bowel tear, but her -- her pain medication and her hormone medication --

THE COURT: What is going on with that?

THE DEFENDANT: Just execute me.

MR. BUFORD: Your Honor, the update that we got from the clinical director at the facility was that Ms. Sternquist is being provided Oxycodone as needed. They have started her, as I understand it, on other pain medications to include Gabapentin and Lyrica with the --

THE COURT: But I don't understand why it was necessary for them to change the regimen that she was already on, given that she was at the other facility for so much longer and they had already --

THE DEFENDANT: I was always on Gabapentin.

THE COURT: -- made assessment of her condition?

MR. BUFORD: It -- my understanding, Your Honor, is that some of the new facilities expressed concern at the dosage, given that it's opioids that are being used for the pain medication, and wanted to proceed deliberately.

I understand Dr. Bialor was consulting with them, urging them to adopt the previous regimen. There was some hesitation given the dosages, and that's what I understand that they're working through now.

THE COURT: Can you follow up on that and include that in the update by next Wednesday, please?

MR. BUFORD: Yes, Your Honor.

THE COURT: Okay. All right. You may take charge. Thank you.

THE DEFENDANT: Just execute me. It would be a lot cheaper. Just have them put a bullet in my brain right here.

(Defendant exited the courtroom.)

THE COURT: Ms. Glashausser, is she going to have to be put on some suicide watch now?

MS. GLASHAUSSER: She's watched twenty-four hours a day, Your Honor.

THE COURT: Okay.

(Matter adjourned.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Stacy A. Mace August 2, 2024

STACY A. MACE DATE